Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 621/2014*, **

Communication submitted by:	Edward Obar Shodeinde (not represented by counsel)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	4 August 2014 (initial submission)
Date of present decision:	11 May 2018
Subject matter:	Deportation to Nigeria
Procedural issues:	Non-substantiation of claims; non-exhaustion of domestic remedies; incompatibility with the Convention
Substantive issue:	Risk of torture in the event of deportation to country of origin
Articles of the Convention:	3 and 22

1.1 The complainant is Edward Obar Shodeinde, a national of Nigeria born in Ibadan on 9 April 1966. Mr. Shodeinde sought refugee protection in Canada, but his claim was rejected on 26 September 2013. He claims that his planned forcible removal from Canada to Nigeria constitutes a violation by Canada of article 3 of the Convention. The complainant is not represented by counsel.

1.2 In his communication of 4 August 2014, the complainant requested that interim measures be granted in order to prevent his deportation, planned by the end of August 2014.[1] On 19 August 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to grant interim measures, requesting the State party to refrain from returning the complainant to Nigeria pending the examination of his communication by the Committee. On 5 March 2018, the complainant confirmed that he was still residing in Canada.

The facts as presented by the complainant

2.1 The author is an evangelical Christian, who used to preach and evangelize Muslims in Nigeria. He fled Nigeria because members of the Islamic fundamentalist group Jama'atu

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

[1] The author was not able to provide the notification of removal since he reportedly lost the document.

Ahlis Sunna Lidda'Awati Wal-Jihad, more commonly known as Boko Haram, made repeated attempts against his life.

2.2 Whilst the author was living in the south of Nigeria, he made business trips to the north in his truck. His parents, also Christians, used to live in Jos, in the northern part of Nigeria. In July of an unspecified year,[2] his parents told him that religious killings were being carried out in the city, and that local Christians feared an attack against their religious organization. The parents asked for the author's financial help in ensuring the security of the organization. In January 2000, while visiting his parents, he learned that the attacks were still occurring, and that the victims were mainly church members or close relatives of church members. He agreed to help financially to improve the security of the church, providing about $3,000.

2.3 On an unspecified date in May 2000, the first attempt was made on the author's life when two men tried to shoot him at his house in Ibadan. The perpetrators were screaming "That was him; that was him — Allahu Akbar, Allahu Akbar". The author bribed a police officer, who told him that the police were implicated in the attack, as they had been paid off by the perpetrators prior to the event. He was also told that the perpetrators' mission was to get rid of him because he was arming Christians who were said to be killing Muslims in Jos.

2.4 Around late October 2000, the author was in a market in Kano when he saw a man being murdered by other men shouting "Allahu Akbar, Allahu Akbar" who were carrying the author's photograph.[3] The author managed to disappear into the crowd and to leave for Ibadan. He did not come back to the market for about six months. In early July 2001, the author's truck was ambushed on the road by unidentified assailants while he was returning to Ibadan from Kano. The truck was then set on fire by the same assailants.

2.5 In December 2001, in the light of those events, the author decided to leave Nigeria and flee to Canada, with the help of a friend. In April 2002, the author arrived illegally at John F. Kennedy Airport in New York, and was provided with a passport arranged by his friend. He went to the state of Minnesota, where he stayed for two years, as he could not find a way to cross into Canada. The author married in August 2002.[4] He contacted a lawyer for advice, who told him that he could assist him in processing an asylum claim in the United States of America, while warning him that the one-year limitation rule would complicate his application. Nonetheless, the author did not file an application for refugee status. He had no legal status in the United States until July 2005, when he obtained a false identity card issued by some of his wife's co-workers.

2.6 On 5 February 2006, the author's parents were killed in an arson attack carried out by members of an Islamic extremist group. The perpetrators have never been arrested.

2.7 In December 2011, the author decided that it was time to move to Canada, after having experienced problems with the authorities of the United States regarding his social security situation. On 26 December 2011, he was arrested by the Canadian border patrol for illegal crossing into Canada.

2.8 On 5 January 2012, he made a claim for refugee protection in Canada. On 27 September 2013, the Refugee Protection Division rejected his claim on the ground that the complainant was not a Convention refugee and was not a person to whom it owed protection. It determined that: despite the extensive documentary evidence regarding conflicts between Muslims and Christians in Nigeria, the complainant had a viable internal flight alternative; there was no evidence suggesting that the alleged assailants had a continuing interest in the complainant; and it had not been established who was responsible for his parents' murder. The complainant did not appeal against the above-mentioned negative decision, because he was not provided with free legal counsel by Manitoba

[2] The year is not specified in the communication: it may be between 1995 and 1999.

[3] The author's market employee also noticed the photograph.

[4] No further details have been provided as to whom he married and where.

Province and could not afford the fees for legal representation. Consequently, he has strongly criticized the Canadian refugee review process.[5]

2.9 The complainant claims to possess new evidence regarding the risk to his life in case of deportation, which he obtained following the rejection of his refugee protection claim by the Refugee Protection Division, and which he could not therefore submit to the Canadian authorities.[6] The evidence includes a letter from Christ Apostolic Church in Nigeria dated 18 April 2014, which mentions the threats from Boko Haram against the complainant; a "wanted person" poster issued by Boko Haram with the complainant's name on it; a statement made by the complainant's cousin to the Nigerian Police on 18 April 2014 that contains references to the "wanted" poster and to threats against the complainant; a letter dated 22 July 2014 from the Canadian branch of the Christ Apostolic Church written by Emmanuel Orungbemila, an associate pastor of the Church, which mentions the potential risk to the complainant in case of deportation to Nigeria; and a handwritten letter from Pastor Alao dated 31 July 2014 warning the author of the threats he will face if he returns to Nigeria.

The complaint

3.1 The complainant claims that, by forcibly returning him to Nigeria, Canada would be exposing him to a risk of torture and of possibly being killed by the terrorist group Boko Haram. He fears that he will again be targeted upon return, since he was attacked and threatened in the past due to his religion, and his parents were killed because of their Christian faith.[7]

3.2 The complainant claims that he has exhausted available and effective domestic remedies in Canada. He submits that, in any case, an application for a judicial review and stay of removal before the Federal Court is not an effective remedy, as it does not prevent or delay deportation in the majority of cases. In this context, the complainant refers to the Committee's jurisprudence in *Singh v. Canada*, in which the Committee considered that the judicial review of a negative refugee protection decision or a pre-removal risk assessment decision did not provide the author with an effective remedy.[8]

3.3 He therefore concludes that no further effective remedies are available to him in Canada, asserting that he would be deported before having access to the pre-removal risk assessment procedure, for which he would be eligible only in September 2014, and in the

[5] The complainant refers here to academic research contained in Jon B. Gould, Colleen Sheppard and Johannes Wheeldon, "A refugee from justice? Disparate treatment in the Federal Court of Canada", Law and Policy, vol. 32, No. 4 (The University of Denver/Colorado Seminary, October 2010).

[6] The complainant attached to the communication the following new evidence: an undated news article entitled "Stop the arson", which contains references to the complainant's name and that of his father, and which evokes a "bloodbath" between Christians and Muslims. The complainant also provided an article from *Time* magazine, dated 10 March 2010, entitled "The violence in Nigeria. What's behind the conflict?" that mentions the killings by machete of villagers near Jos. The article focuses on the reasons for such violence and evokes the ethnic or religious differences and the economic and political situation in Nigeria. The author also cited Human Rights Watch, "World report 2012: Nigeria. Events of 2011".

[7] The complainant does not link his claims to any specific articles of the Convention against Torture.

[8] In *Singh v. Canada* (CAT/C/46/D/319/2007), para. 8.8, the Committee indicates that the complainant states that he did not have an effective remedy to challenge the decision on deportation and that the judicial review of the Immigration Board decision, denying him Convention refugee status, was not an appeal on the merits, but rather a very narrow review for gross errors of law. In response, the State party submits that the Board's decision was subject to judicial review by the Federal Court. The Committee notes that according to section 18.1 (4) of the Canadian Federal Courts Act, the Federal Court may quash a decision of the Immigration Refugee Board if it is satisfied that: the tribunal acted without jurisdiction; failed to observe a principle of natural justice or procedural fairness; erred in law in making a decision; based its decision on an erroneous finding of fact; acted, or failed to act, by reason of fraud or perjured evidence; or acted in any other way that was contrary to law. The Committee observes that none of the grounds above include a review of the merits of the complainant's claim that he would be tortured if returned to India.

context of which he would be able to submit new evidence.[9] He affirms that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

State party's observations on admissibility and the merits

4.1 On 23 April 2015, the State party submitted its observations on admissibility and the merits of the complaint. It argues that the complainant's allegations are inadmissible as they are manifestly unfounded, since he did not establish a prima facie case. Should the Committee consider any of the complainant's allegations to be admissible, they should be dismissed for lack of merit.

4.2 According to the State party, there are two related bases for the complainant's claim in his communication. First, the author fears an unnamed Islamic fundamentalist group that made three attempts on his life between May 2000 and July 2001 due to his involvement with and support of the Christian church in Nigeria. The complainant claims that, if returned to Nigeria, he would face the same fate as his parents, who were killed because of their Christian faith and evangelism. The second basis for the complainant's claim is prospective only. He claims that, upon return, he would be at risk of being tortured and/or killed by the Muslim fundamentalist group Boko Haram. He claims to be an evangelical Christian who openly preaches in Canada, and has previously done so in Nigeria, and who intends to continue his father's work with the church upon his return. He alleges that Boko Haram is actively seeking and pursuing him, despite him having left Nigeria over 13 years ago, before the fundamentalist group was founded.

4.3. The State party also submits that the complainant lived for 36 years in the city of Ibadan, located in southern Nigeria, until he left the country for the United States in April 2002. He lived and worked illegally in the United States for approximately 10 years, during which time he never made a claim for refugee protection. During that time, the author married Sabrina Walker. He entered Canada illegally on 26 December 2011 by crossing the Canada-United States land border on foot. On 5 January 2012, the complainant made a claim for refugee protection in Canada.

4.4 On 27 September 2013, the Refugee Protection Division of the Immigration and Refugee Board of Canada determined that the complainant was neither a Convention refugee nor a person in need of protection. After hearing his testimony and examining his evidence, the Division concluded that the complainant was personally not credible in his claims, and had provided insufficient objective evidence to support his allegations of future risk. The Refugee Protection Division found that either the author was not telling the truth about having engaged in similar work to his father in Nigeria or once he had left the country, or he was simply speculating that the attackers continued, or would continue, to have an interest in harming him. Moreover, the Refugee Protection Division concluded that the complainant had an internal flight alternative in Lagos, Benin City or Port Harcourt, all cities located in southern Nigeria, given that the religious violence is concentrated in northern Nigeria, and found that there was a lack of evidence to suggest that non-State actors would have any interest in pursuing him in any city in southern Nigeria.

4.5 On 19 December 2014, the complainant's pre-removal risk assessment application was rejected. As the complainant's allegations of risk had already been given full consideration by the Refugee Protection Division, the emphasis in the pre-removal risk assessment was on evidence with respect to any changes to the complainant's situation. After evaluating all the evidence, the specialized risk-assessment officer determined that the complainant would "not face a risk of persecution, risk to life, risk of torture, or risk of cruel and unusual treatment or punishment if returned to Nigeria".

4.6 The State party submits that the complainant's communication is inadmissible in its entirety for three reasons. First, the complainant has failed to exhaust available domestic remedies by not applying for leave to seek judicial review of the Refugee Protection

[9] On 20 February 2015, the State party indicated that the complainant was notified of the decision regarding his pre-removal risk assessment application on 5 January 2015. The complainant's application was rejected on 19 December 2014.

Division and pre-removal risk assessment decisions, and by failing to make an application for permanent residence on the basis of humanitarian and compassionate grounds. Both are effective remedies that the author should have availed himself of in order for his communication to be found admissible. The State party argues that, although the pre-removal risk assessment decision may be subject to judicial review, with leave, by the Federal Court, and a judicial stay of removal pending the final decision may also be available, the complainant has failed to apply for leave to seek such review. It also argues that judicial review in such cases assesses, inter alia, whether a factual error has been made, that such review is effective and substantive and that, in practice, cases are sent back for reconsideration on this basis.

4.7 Second, the State party asserts that the complainant's allegations are incompatible with the provisions of the Convention. The mistreatment that the author claims he had suffered does not amount to "torture" for the purposes of the Convention. Furthermore, it submits that the acts in question were not carried out by the State authorities or with their acquiescence, as required by the definition of torture in article 1 of the Convention.

4.8 Third, the State party argues that the complainant's communication has not been substantiated on even a prima facie basis. The complainant has not provided sufficient evidence to substantiate any past incidents of torture or a future risk of torture upon return, either from the State party's authorities or from non-State actors, such as Boko Haram, with the acquiescence of the State. There is no evidence to suggest that the complainant has suffered serious mistreatment at the hands of the police, the local authorities where the alleged attempts took place, or the national authorities in Nigeria, or with their acquiescence. There is no evidence that the State party's authorities are seeking the complainant at the present time, or indeed that the complainant has ever been sought by them in the past. The State party claims that the complainant has not provided any evidence to substantiate his claims that the police or any other State actors acquiesced, or would acquiesce, in any mistreatment to which the complainant alleges he was, or will be, subjected by Boko Haram. Moreover, the State party indicates that the complainant has an internal flight alternative in Nigeria. It adds that the complaint's communication is based on an alleged risk from Boko Haram, which is a localized risk that is restricted to northern Nigeria. No evidence has been provided to the Committee, or to domestic decision makers, to indicate that, were the complainant to be returned to an area in southern Nigeria, particularly Lagos, he would be sought, either by the police or by Boko Haram, with the intention of harming him.

4.9 If the Committee considers that the complainant's communication is admissible, the State party requests that it should be considered to be without merit. The State party requests the Committee to lift its request for interim measures in respect of the complainant.

Complainant's comments on the State party's observations

5. On 5 March 2018, the complainant confirmed that he still resides in Canada and that there were no further applications or processes pending as at 30 May 2016, when he shared his updated contact details. He asserted that he did not have anything to add to his initial communication to the Committee.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it has been

established that the application of those remedies has been unreasonably prolonged or is unlikely to bring effective relief to the alleged victim.[10]

6.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible under article 22 (5) (b) of the Convention on the grounds that the complainant has failed to exhaust all available domestic remedies, as he failed to pursue an application for judicial review of the negative Refugee Protection Division and pre-removal risk assessment decisions, along with which a stay of removal can be requested, and he failed to make an application for permanent residence on the basis of humanitarian and compassionate grounds.

6.4 The Committee recalls its jurisprudence that the humanitarian and compassionate application is not an effective remedy for the purposes of admissibility pursuant to article 22 (5) (b) of the Convention, given its discretionary and non-judicial nature and the fact that it does not stay the removal of a complainant.[11] Accordingly, the Committee does not consider it necessary for the complainant to exhaust the application for permanent residence on the basis of humanitarian and compassionate grounds for the purpose of admissibility.[12]

6.5 Concerning the complainant's failure to apply for leave to seek a judicial review of the Refugee Protection Division and pre-removal risk assessment decisions, the Committee notes the State party's argument that judicial review in such cases assesses, inter alia, whether a factual error has been made, that such review is effective and substantive and that, in practice, cases are sent back for reconsideration on this basis.[13] The State party further asserts: that the complainant's allegations are incompatible with the provisions of the Convention, as the mistreatment he claims to have suffered does not amount to torture; that the acts in question were not carried out by the State authorities or with their acquiescence, as required by the definition of torture in article 1 of the Convention; and that the complainant has failed to substantiate on even a prima facie basis his claims that he would face a personal risk of being subjected to torture if returned to Nigeria.

6.6 The Committee notes the complainant's assertion that he did not apply for any of the above remedies as, in any case, such remedies are ineffective and unlikely to bring effective relief, and therefore the communication should be found to be admissible in accordance with article 22 (5) (b). He also claims that the evidence provided clearly demonstrates a personal risk and that his claim has therefore been substantiated and is admissible.

6.7 The Committee recalls its jurisprudence that judicial review in the State party is not a mere formality, and that the Federal Court may, in appropriate cases, look at the substance of a case.[14] Mere doubt about the effectiveness of a remedy does not, in its view, dispense with the obligation to exhaust it. The Committee concludes that the complainant has failed to advance sufficient elements that would show that judicial review of the negative Refugee Protection Division and pre-removal risk assessment decisions and judicial stay of removal would have been ineffective in the present case, and has not justified his failure to avail himself of these remedies.

6.8 Accordingly, the Committee is satisfied with the argument of the State party that, in the particular circumstances of the present case, there were remedies, both available and effective, which the complainant has not exhausted.[15] In the light of this finding, the Committee does not deem it necessary to examine the State party's assertion that the

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[10] See, inter alia, *E.Y. v. Canada* (CAT/C/43/D/307/2006/Rev.1), para. 9.2. See also Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22.

[11] See, e.g., *J.S. v. Canada* (CAT/C/62/D/695/2015), para. 6.3; *J.M. v. Canada* (CAT/C/60/D/699/2015), para. 6.2; *A v. Canada* (CAT/C/57/D/583/2014), para. 6.2; and *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 7.4.

[12] See, e.g., *S.S. v. Canada* (CAT/C/62/D/715/2015), para. 6.3.

[13] According to sect. 18.1 (4) of the Federal Courts Act, Federal Court judicial review of pre-removal risk assessment decisions is not limited to errors of law and mere procedural flaws, and the Court may look at the substance of a case.

[14] See, e.g., *Aung v. Canada* (CAT/C/36/D/273/2005/Rev.1), para. 6.3; and *S.S. and P.S. v. Canada* (CAT/C/62/D/702/2015), para. 6.5.

[15] See, e.g., *J.S. v. Canada*, para. 6.6; and *S.S. and P.S. v. Canada*, para. 6.6.

communication is inadmissible as incompatible with the Convention or manifestly unfounded.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (b) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party;

(c) That the State party should ensure that the complainant can benefit from remedies available on appeal to challenge the negative decisions allowing for his forcible removal.